

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SECURITIES EXCHANGE ACT OF 1934
Release No. 65461/September 30, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3296/September 30, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14475

In the Matter of :
: ORDER MAKING FINDINGS AND
RICHARD D. MITTASCH : IMPOSING SANCTIONS BY DEFAULT

SUMMARY

This Order bars Richard D. Mittasch (Mittasch) from association with any broker, dealer, or investment adviser. Mittasch was previously enjoined from violating the antifraud provisions of the securities laws.

I. BACKGROUND

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Mittasch on July 20, 2011, pursuant to Sections 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that Mittasch was enjoined in 2011 from violating the antifraud provisions of the federal securities laws, based on his involvement in the fraudulent use of investor proceeds in a hedge fund. Mittasch was served with the OIP on August 9, 2011. He failed to file an Answer, due twenty days after service of the OIP. See 17 C.F.R. § 201.220(b); OIP at 3. A respondent who fails to file an Answer to the OIP may be deemed to be in default, and the administrative law judge may determine the proceeding against him.¹ See 17 C.F.R. §§ 201.155(a), .220(f); OIP at 3. Thus, Mittasch is in default, and the undersigned finds the following allegations in the OIP are true.

II. FINDINGS OF FACT

Mittasch is permanently enjoined from violating the antifraud provisions of the federal securities laws, specifically, from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and from aiding and abetting violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. SEC v. Buckhannon, No. 8:10-cv-02859 (M.D. Fla.

¹ Mittasch was advised that if he failed to file an Answer to the OIP within the time provided, the undersigned would enter an order barring him from association with a broker-dealer or investment adviser. See Richard D. Mittasch, Admin. Proc. No. 3-14475 (A.L.J. Sept. 20, 2011) (unpublished).

June 29, 2011).² The wrongdoing that underlies Mittasch's injunction occurred from August 2008 to at least May 2009 while he was the chief executive officer and managing partner of Imperium Investment Advisers, LLC (Imperium), an investment adviser registered with the Commission. During part of that time, he was also affiliated with Maximum Financial Investment Group, Inc. (Maximum), a broker-dealer formerly registered with the Commission.

Maximum and Imperium served as trustee for a Bradenton, Florida-based hedge fund, Vestium Equity Fund, LLC (Vestium). Imperium and Vestium were parties to a trust indenture agreement that obliged Imperium to hold investor funds in a custodial account and to monitor Vestium's investments to ensure the fund used investor proceeds only for uses specified in the fund's offering materials. The trust indenture was incorporated into Vestium's securities offering materials. Mittasch also was the co-signatory for Vestium's custodial bank account. He approved hedge fund transactions and disbursed investor funds for uses not permitted by the fund's offering documents or the trust indenture. Mittasch had a direct, undisclosed financial interest in at least one of the transactions he approved. This transaction created an undisclosed conflict of interest between him and the fund's investors.

III. CONCLUSIONS OF LAW

Mittasch is permanently enjoined "from engaging in or continuing any conduct or practice in connection . . . with the purchase or sale of any security" within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act and Sections 203(e)(4) and 203(f) of the Advisers Act.

IV. SANCTION

Mittasch will be barred from association with any broker, dealer, or investment adviser. These sanctions will serve the public interest and the protection of investors, pursuant to Sections 15(b) of the Exchange Act and 203(f) of the Advisers Act. They accord with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). Mittasch's unlawful conduct was egregious, over a period of many months. There are no mitigating circumstances.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, RICHARD D. MITTASCH IS BARRED from association with any broker or dealer.

IT IS ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, RICHARD D. MITTASCH IS BARRED from association with an investment adviser.

Carol Fox Foelak
Administrative Law Judge

² Official notice, pursuant to 17 C.F.R. § 201.323, is taken of the fact that Mittasch was also ordered to disgorge \$611,750 and prejudgment interest of \$85,023.08 and to pay a civil penalty in an amount to be determined.